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MAY MEETING.

THE stated meeting was held on Thursday, the 8th instant, at three o'clock, P. M.; the first Vice-President, in the absence of the PRESIDENT, in the chair.

The record of the last meeting was read and approved; and the list of donors to the Library during the last month was read by the Librarian.

The Cabinet-Keeper reported the gift of the sword which belonged to Major-General Artemas Ward, from his great-grandson Carlos A. Ward, of Valparaiso; of several United States gold coins and Rebellion tokens, from Mr. Norcross; of two photographs of General Robert E. Lee, and one of Mrs. Lee, from Mr. Bradford; and the purchase of one hundred and forty Massachusetts coins, by Dr. Storer, for the Society. He also reported the loan, by Mr. Bradford, of a miniature water-color portrait of his great-great-grandfather Colonel Gamaliel Bradford, drawn by his fellow soldier Kosciuszko.

The Corresponding Secretary reported the receipt of a letter from Reginald H. Fitz accepting his election as a Resident Member of the Society.

The Recording Secretary reported from the Council the appointment of the following committees:

House Committee: Grenville H. Norcross, Samuel S. Shaw, and Worthington C. Ford.

Finance Committee: C. F. Adams, Grenville H. Norcross, and Charles P. Greenough.

The Vice-President appointed as the Committee to publish the *Proceedings* of the Society: C. F. Adams, James Ford Rhodes, and Edward Stanwood.

It was voted that the income of the Massachusetts Historical Trust Fund for the last financial year be retained in the Treasury, to be expended on such objects as to the Council of the Society may seem desirable.

The VICE-PRESIDENT then presented a copy of several old documents and of an Orderly Book, kept before and at the very beginning of the Revolutionary War. The originals belong to Mrs. Mary Lowe (Poole) Harlow, widow of Edward D. Harlow, of Ayer; and by her courtesy he was allowed to use them. These papers have been in her family for a long period of time. The Library already has a dozen or more copies of similar documents, some of which have been already printed.¹

Mr. WINSLOW WARREN, in submitting the following papers, said:

Mr. Richard W. Hale of this city has handed me some letters and memoranda written by his grandfather, Salma Hale, who was the father of our late member, George S. Hale, and first President of the Cheshire Railroad Company, a Member of Congress from New Hampshire, author of Hale's *History of the United States* and one of the Trustees of Dartmouth College, a body pronounced unconstitutional in the famous Dartmouth College case. They are so interesting in their detailed accounts of Jefferson and references to John Adams, that I submit them for publication, reading certain portions of them of special importance.

The first one is an original letter from Salma Hale to his father, David Hale, dated Charlottesville, May 5, 1818, containing a short description of Virginia and a reference to a visit to Mr. Jefferson. The next is from Salma Hale to Hon. Arthur Livermore, Holderness, New Hampshire, and dated Richmond, May 16, 1818. After a description of Virginia and of a Mr. Pope of Powhatan whom he met, he gives a vivid account of Mr. Jefferson's appearance and way of living at Monticello.

Next are memoranda of Salma Hale, in which he gives a very striking interview with a loyalist whose name is not stated, concerning John Adams, and also an account of his interviews and conversations with Jefferson, and particularly with reference to John Adams.

The last one is a copy of a letter from Jefferson to Salma Hale, dated Monticello, June 26, 1818. The original was in the

¹ The Orderly Book begins April 28, 1775, and runs to July 7, and is the same in contents as that printed in 1 *Proceedings*, XV. 93.

possession of Mrs. Harry Hibbard, whose husband was prominent in the Franklin Pierce administration. It may be now in the possession of the New Hampshire Historical Society.

I also submit a letter to me from our President, Mr. Adams, and take the opportunity to print a letter from John Adams dated April 1, 1756. It is one of two letters from John Adams to a classmate, Charles Cushing, then teaching school in Newbury, printed in the *Nantucket* (Mass.) *Gazette*, in 1817. They were reprinted in the *Boston Daily Advertiser*, March 5, 1817. They were used in part by Charles Francis Adams in the *Works of John Adams* (i. 29, 36), together with a letter from Charles Cushing, the younger, on the unauthorized publication in 1817.

SALMA HALE TO DAVID HALE.

CHARLOTTESVILLE, May 5, 1818.

DEAR SIR,— I am now in the heart of Virginia about 2 miles from the residence of Mr. Jefferson. I have travelled thro a poor country, and over bad roads, and feel a little the worse for the toil.

To-morrow I shall visit Mr. Jefferson to whom I have a letter of introduction. I shall then look around me a little and return home as quick as possible.

The principal part of Virginia thro which I have travelled is a level sandy pine plain, there are many log huts, and a very few good houses, not near so many as in the county of Cheshire, excepting in Richmond. The chimneys are at each end, and outside.

The land yields ten or fifteen bushels of corn to the acre, and about as much wheat. Every step I take makes me love New Hampshire better.

Yours

S. HALE.

May 7. I have just returned from visiting Mr. Jefferson, with whom I have spent a very agreeable day. He appears to be very rich, has a large brick house on the top of a mountain, and lives happy and contented.

[Addressed]

Free

S. HALE M. C.

Mr. DAVID HALE.

Alstead

New Hampshire.

SALMA HALE TO ARTHUR LIVERMORE.¹

RICHMOND, VIR., May 16, [18]18.

DEAR SIR, — A few days ago I returned from an excursion into the interior of Virginia, having been absent a fortnight. Five or six days I spent with a Mr. Pope, a lawyer and planter, of Powhatan, one day at Monticello, and two at Barboursville, and during the whole time was as happy, as cordial and elegant hospitality could make a stranger. Mr. Pope is a brother of the Mr. P. mentioned by Mr. Wirt in his preface,² and spent several days at Washington during the Session. He is not remarkable for talents, but is all life and laughter, and is well known throughout Virginia for his convivial humour. Mr. Jefferson I found on the top of his mountain surrounded with curiosities, and himself not the least. The base of Monticello is five or six miles in circumference, and entirely covered with a thick forest. On the summit is a plain of four or five acres, in the center of which stands the house, which is of brick, and exposed to every wind that blows. On three sides is a prospect extending fifty, seventy, and one hundred miles mostly over a level and cultivated country. Mr. J. does not appear to have suffered much from age. He is cheerful, social, and unreserved — talked of politics some but of literature and religion more. Of Gov. Langdon, he spoke with great respect, but regretted that in his old age he had become gloomy and unhappy. His house is filled with paintings and Indian relics, and a view of his rooms affords as much gratification as of a museum.

Barboursville is a most elegant retreat in the midst of the mountains. The Gov.³ has a large plantation — say 5000 acres, — and more than one hundred negroes. Last year he sowed 750 bushels of wheat, and had not the fly committed devastation, would have reaped 8000. Of tobacco and corn he raised good crops. I do not think that he has much disposable wealth, as his object appears to be to improve and embellish his plantation which is new. In this employment he appears to live cheerful, contented and happy. Here I heard yankee doodle played delightfully on a piano, and it brought to my recollection the celebrated Swiss song of Ranz des Vaches.

I have had a good opportunity to become acquainted with the Virginia character. Take the people *en masse*, and they are not so estimable as the yankees. The best are perhaps better. The

¹ Son of Samuel Livermore. Thwing, *The Livermore Family of America*, 144.

² Nathaniel Pope. Wirt, *Sketches of the Life and Character of Patrick Henry*, vi.

³ James Barbour (1775-1842).

soil is far from fertile, and it would be impossible for a family to live on one hundred acres as they do in N. H.

In a day or two I shall commit myself to the winds and waves, — which a wise ancient observed was one of the three follies he had been guilty of. I *reckon* he had been sea sick. I hope I shall arrive at home in season to be at Concord. Whom shall we make Senator?¹ Will not Plumer want it? I presume he cannot get it but I hope we shall have some one who will do honor to the State.

The Season is uncommonly late here. Winter yet lingers, and the farmers, and all others look sad. Perhaps I have seen Virginia at an inauspicious moment, but its aspect now does not make me regret that my lot was cast in New Hampshire. With great regard

Your Obedt Servt.

S. HALE.

[Addressed] Free S. HALE M. C.
HON. ARTHUR LIVERMORE
Holderness
New Hampshire

MEMORANDA BY SALMA HALE.

I.

In a journey to the southward I fell in company with an aged and respectable gentleman, a native of one of the middle states, who in our revolutionary war, espoused the cause of his king, and held an important post in the royal army. He conversed freely of his principles and motives, and appeared to have been well acquainted with the events of that period. "It has been disputed," said I, "where the Revolution originated, in Massachusetts or Virginia. What was the opinion of the royalists of that period, and what is yours?" "That it originated in Massachusetts, most certainly," was his reply. "And if I were to state who, in my opinion contributed most to bring on the contest, I should name John Adams, who was afterwards your president. Concerning him, I will relate an anecdote. He came into notice during the administration of governor Bernard, and distinguished himself by his resolute opposition to many of his measures. The attorney general, Sewall, was however his bosom friend. At that time the office of Justice of the Peace, was on many accounts advantageous to a young man, and with the knowledge of Adams, the attorney general requested Ber-

¹ Jeremiah Mason resigned in 1817, and Clement Storer was chosen in his place, taking his seat December 5, 1817. In 1818 John F. Parrott, of Portsmouth, was elected.

nard to appoint his friend to that office. The governor expressed his desire to oblige Mr. Sewall, but observed, "This young man has ranked himself with my opponents. He denounces and endeavors to thwart my measures and those of the ministry. I could not justify it to my sovereign to bestow a favor upon such a person. And I wish you to tell him from me, that *so long as he continues to oppose me and the ministry*, he must expect no promotion." Sewall conveyed the message to Adams. "Then tell the governor from me," replied the latter, "that I will not change my course, but will raise such a flame in the province, as shall expel him from it, and all royal rule from America." The truth of this anecdote has been confirmed to me by another respectable gentleman, who was then a student in the office of Mr. Sewall.

In the year 1818, I paid a visit to Mr. Jefferson, in his retirement at Monticello. During the visit, the credibility of history became a topic of conversation, and we naturally adverted to that of our own country. He spoke with great freedom of the Patriots and heroes of our revolution, and of its gloomy and brilliant periods. I will give the substance of a part of his remarks. "No correct history of that arduous struggle has yet been, or ever will be, written. The actors in important and busy scenes are too much absorbed in their immediate duty, to record events, or the motives and causes which produced them. Many secret springs, concealed even from those upon whom they operate, give an impulse to measures which are supposed to be the result of chance; and a fortuitous concurrence of causes is often attributed to the concerted plan of leaders who are themselves as much astonished as others at the events they witness. They who took an active part in those important transactions can hardly recognize them as they are related in the histories of our revolution. That of Botta, an Italian, is the best. In all of them, events are misrepresented, wrong motives are assigned — justice is seldom done to individuals, some having too much, and some too little praise. The private correspondence of three or four persons in different official stations at that time, would form the best history. I have heard that Mr. Adams is writing something on the subject. No one is better qualified than he to give to the reader a correct impression of the earlier part of the contest. No history has done him justice, for no historian was present to witness his conduct in the Continental Congress. In his zeal for independence he was ardent; in contriving expedients and originating measures he was always busy; in disastrous times, when gloom sat on the countenances of most of us, his courage and fortitude continued unabated, and his animated exhortations restored confidence to those who had wavered. He seemed to forget

every thing but his country and the cause which he had espoused. I must, however, say that I always thought him less fond of the principles of enlarged liberty, than of independence; but the experience of the last thirty years has perhaps convinced him that, to accomplish any good purpose, the government we have established is strong enough." H.

[Endorsed] "Conversation with Jefferson."

II.

1818. (Richmond and Monticello between Sessions.)

Once when at W[ashington] in 1818 having learnt that Mr. Charter, my former partner in the printing business at Walpole [New Hampshire], resided at Richmond, and never having seen the ocean except once or twice from its shore, I determined to visit that city, and return home to Boston by water. On my way thither, I called on a gentleman Mr. Pope, whom I had before seen; and from him I learned that the residence of Mr. Jefferson was not far distant. I expressed a desire to see him and he very civilly offered me a letter of introduction. The next day I rode to Charlottesville, and, on the following forenoon, I ascended to his residence on Monticello, by a steep road, which nearly encircled it. His dwelling house stood on the north border of a plateau containing several acres of level land, the middle of the house being an oblong, and each end a half circle. On enquiring at the door, I was told that Mr. Jefferson was taking his usual walk in his grounds, and was invited to enter and await his return. In a short time, I saw him thro the window among the trees, a tall, spare man, walking towards the house, throwing his legs about unmindful of his steps, like a man in a reverie. On entering he gave me a civil welcome, and, after reading the letter of introduction, took his seat, and began to converse on common topics, saying, however, nothing of politics. He spoke with interest of Lewis and Clark's tour over the Rocky Mountains, a history of which lay on the table, and with animation and pathos of the feelings and sufferings of the revolutionary period. He observed, in substance, that he had read no history that gave such a glowing account of them as they deserved. Botta's was the best. Marshall's was an unimpassioned narrative of events, and failed to give a just idea of the intense feelings, lofty purposes, and constant sufferings of the people, during that period. The world did not know, and does not now know, how sad and dismayed, at various times, was the Continental Congress, to whom the posture of affairs was better known than to the people. It was at these times, when the

rest of us were dispirited and silent, that the loud voice of John Adams, the Ajax of the body, resounded through the hall, revived our spirits and restored our confidence. To him, more than to any other man, is the country indebted for independence.

After staying an hour or two, I desired him to order a servant to lead my horse to the door. "Oh, no," said he, "you must not leave me so soon; you must dine with me and sleep with me. But this is just the time when I invariably take a ride; and it is more-over my duty to visit, to day, the workmen on the University grounds and see what they are doing. Here are books, at your service, and you will find walks about the grounds. that may amuse you, till my return."

I passed the time as he suggested very agreeably, and also in examining curiosities in the spacious hall, such as the skeleton, not wholly perfect, of a mammoth, and skeletons or bones, and stuffed skins, of other animals, which once inhabited Virginia, and of which some had become extinct. I saw there also a shirt, woven of steel wire, which he said was found in the southern part of the State.

On his return after an absence of a few hours, we were summoned to dinner. He offered me several kinds of wine, but said that he drank none but *lachryma Christi*, which was made from grapes that grew on the sides of Mount Vesuvius. I tasted of a dish, which was new to me, concocted of corn meal and grated cheese. He remarked that he was very fond of corn meal, in all the modes in which it could be presented as food for man; that when minister to France, he saw none, and longed for it; that when he visited Rome, observing "American Corn Meal," on a shop door, he ordered a small quantity to be sent to his lodgings, and gave directions how to prepare it. "On tasting it, I found that the bread or cake had been made of your hard, dry northern corn — I'd as lief eat sawdust." He offered me tomatoes, with the remark, that he introduced that plant, into this country, from Europe.

After dinner, the Christian religion became a topic of conversation. In the course of it I remarked that I had lately seen quoted, in a pamphlet, a letter from him, expressing a doubt whether Jesus Christ was the Son of God, and classing him with the great men of antiquity — Zoroaster, Socrates, Confucius, &c. He remembered no such letter; but after reflecting a while, he observed that something like that might have been said in his correspondence with Dr. Rush. This pamphlet, I observed, was the first of a series, seven or eight in all, on the subject of Unitarianism; and was published alternately by opponents and professors of that doctrine. The information interested him, and he was gratified when told that, on my return home, copies of all of them should be sent to him.

THOMAS JEFFERSON TO SALMA HALE.¹

MONTICELLO, June 26, [18]18.

SIR, — I thank you for the pamphlets you have been so kind as to send me, which I now return. They give a lively view of the state of religious dissension now prevailing in the North, and making its way to the South. Most discussions begin with a discussion of principles; but soon degenerate into episodical, verbal, or personal cavils. Too much of this is seen in these pamphlets, and, as usual, those whose dogmas are the most unintelligible are the most angry. The truth is that Calvinism has introduced into the Christian religion more new absurdities than its leader had purged it of old ones. Our Saviour did not come into the world to save metaphysicians only, his doctrines are levelled to the simplest understanding: and it is only by banishing Hierophantic mysteries and scholastic subtleties, which they have nicknamed Christianity and getting back to the plain and unsophisticated precepts of Christ, that we become *real* Christians. The half reformation of Luther and Calvin did something towards a restoration of his genuine doctrines: the present contest will, I hope, complete what they begun and place us where the evangelists left us. I salute you with esteem and respect.

TH. JEFFERSON.

MR. SALMA HALE.

[Endorsed] The pamphlets were by Morse, Lowell, Channing, etc. The original is with Mrs. Hibbard in her book of autographs.

CHARLES FRANCIS ADAMS TO WINSLOW WARREN.

WASHINGTON, D. C., March 5, 1913.

MY DEAR MR. WARREN, — At the last meeting of the Society you were unable to put in that letter containing Jefferson's statement as to the share to be credited to John Adams in our Revolutionary annals.

You may remember I called your attention to a statement I had come across of Albert Gallatin, relating also to John Adams. It is curious, and historically valuable.

There is no witness on that particular topic whose testimony is entitled to carry more weight than that of Albert Gallatin. Jefferson's right hand man, he was, to my mind, a man of far greater weight, both as a statesman and as an observer, than Jefferson.

¹ This letter is printed from a copy, but the endorsements seem to be in Mr. Hale's hand.

He and Hamilton were our two strong Secretaries of the Treasury; and Gallatin was the rudder which steered the administrations of Jefferson and subsequently of Madison.

The passage to which I refer is in the *Life and Letters of Francis Lieber* (pp. 96, 97). It is dated July 16, 1832, and therein Gallatin gave his testimony as follows:—"I called on Mr. Gallatin. (He regrets that he never kept a journal. His memory now has gone. Calls me happy that I keep one.) He wishes that he had written on one thing, — the administration of John Adams; 'because,' said he, 'his turning out is the only revolution which we have had in this country. I should be able to write it well, because, though then a strong party man, I am now calm and can judge impartially. Both parties committed serious faults. Old Adams was wise, but not so his associates. He was right in turning out Mr. Pickering. Both the Adamses were the purest men and the most earnest searchers after truth the United States ever had. What they say is often indiscreet, but their actions, never. They are always open to conviction.' We spoke of Demosthenes, and I said I could not find him so great an orator as the best modern speakers. Mr. Gallatin said he had never read him in the original, and that his judgment, therefore, did not go for much, but that he had never found him as great as Cicero, whom, however, he had read in the original. 'There is a great difference,' he continued, 'between addressing the people themselves, as Demosthenes did, or only their representatives. During the Western insurrection I had twice to address the people, and found that it is something totally different. You feel that each word may ruin you, and that you have to carry your point at once. From 1795 to 1813 I took part effectually in the politics of the country. After that I remained in public life, but only as a foreign minister.' He thought the Supreme Court should not decide between citizens of different States; it had lost its popularity, etc." The whole statement is interesting.

I would be glad to have you incorporate this in your proposed communication, whenever you finally prepare the same.

I remain, etc.,

CHARLES F. ADAMS.

JOHN ADAMS TO CHARLES CUSHING.¹

WORCESTER, April 1, 1756.

MY FRIEND,— I had the Pleasure, a few Days since, of receiving your favour of Feby 4th. I am obliged to you for your advice, and

¹ 1734-1810, son of Nathaniel Cushing.

for the manly and rational Reflections with which you enforced it. I think I have deliberately weighed the subject and had almost determined as you advise. Upon the Stage of Life. we have each of us a part, a laborious and difficult Part, to Act, but we are all capable of acting our Parts, however difficult, to the best advantage. Upon common Theatres indeed the applause of the audience, is of more importance to the Actors than their own approbation. But upon the Stage of Life, while Conscience Clapps, let the World hiss! On the contrary if Conscience disapproves, the loudest applauses of the World are of little Value. While our own minds commend we may calmly despise all the Frowns, all the Censure, all the Malignity of men.

Should the whole Frame of Nature round us break
In ruin and Confusion hurl'd
We unconcern'd might hear the mighty crack
And stand unhurt amidst a falling World.

We have indeed the liberty of Chusing what Character we shall sustain in this great and important Drama. But to chuse rightly we should consider in what Character we can do the most service to our fellow men, as well as to our selves. The Man who lives wholly to himself is of less worth than the Cattle in his Barn. Let us look upon a Lawyer. In the beginning of Life we see him, fumbling and raking amidst the rubbish, of writs, indightments, pleas, ejectments, enfiefed, illatebration and a 1000 other lignum vitae words that have neither harmony nor meaning. When he gets into Business he often foments more quarrells than he composes, and enriches himself, at the expence of impoverishing others more honest and deserving than himself. Besides the noise and bustle of Courts, and the labour of inquiring into and pleading dry and difficult Cases, have very few Charms in my eye. The study of Law is indeed an avenue, to the more important offices of the State, and the happiness of human society is an object, worth the pursuit of any man. But the Acquisition of these important offices depends, upon many circumstances of Birth and fortune, not to mention Capacity, which I have not, that I can have no hopes of being usefull that way. The Physician, if he has real skill and ingenuity, as things go now, will have no employment. And if he has not skill and ingenuity, will kill rather than cure. I have not mentioned the infinite toil and labour of his occupation. The Divine has a thousand obstacles to encounter. He has his own and his peoples Prejudices to combat, the capricious humours and fancies of the vulgar to submit to, poverty to struggle with, the charge of heresy to bear, systematical Divinity, alias systematical Vexation of spirit to study and sift.

But on the other hand he has more leisure to inform his mind, to subdue his passions, fewer temptations to intemperance and injustice, tho' more to trimming and hypocrisy, an opportunity of diffusing Truth and Virtue among his people — upon the whole I think if he relies on his own understanding more than the decrees of Councils, or the sentiments of fathers, if he resolutely discharges the duties of his station, according to the dictates of his mind, if he spends his time in the improvement of his head in knowledge and his heart in Virtue, instead of sauntering about the streets, he will be able to do more good to his fellow men, and make better provision for his own future happiness in this profession, than in any other. However I am as yet very contented in the place of a School Master. I shall not therefore very suddenly become a Preacher. When I do, I hope to live a year or two in the same neighbourhood with you. Had indulgent Heaven thrown me into the neighbourhood of a D[alton],¹ or some other such kind Friend of my former acquaintance, I think little had been wanting to compleat my satisfaction. It is late in the evening, and my candle, my pen, and more than all, my inclination, calls upon me to subscribe my self your

Sincere Friend [and serv]^t

J. A.

P. S. There is a story about Town that I am an *Arminian*. Pray write me every opportunity, and be so kind as to omit ½ dozen wafers in your next. The last was barr'd and barricadoed with so many seals, that I was out of all patience before I could come to the treasure.

Mr. CLEMENT read a paper on the "Conspiracy of Silence" of the press relative to the atrocities committed by the Balkan allies against the Moslem population.

Professor MACDONALD, a Corresponding Member, read a paper on

THE INDEBTEDNESS OF JOHN MARSHALL TO ALEXANDER HAMILTON.

It will be recalled that the scheme of financial reorganization initiated and carried through by Alexander Hamilton was laid before Congress in three separate parts: a first report on public credit, submitted January 9, 1790, outlining a plan for funding the national debt, including the assumption by the

¹ 1738-1817, a United States Senator from Massachusetts, 1789-1791.

Federal Government of the debts of the States; a second report on public credit, outlining a system of excise taxes, submitted December 13, 1790; and, on the same date, a plan for a national bank.¹ The adoption of the funding scheme, involving as it did a bargain between Hamilton and Jefferson regarding the location of the national capital, aroused widespread and outspoken opposition to Hamilton in anti-Federalist quarters, and particularly on the part of Jefferson, his natural enemy, which threatened to defeat later financial proposals. Nevertheless, on August 9, three days before adjournment, the House of Representatives by resolution requested the Secretary of the Treasury to report, on the second Monday of December, "such further provisions as may, in his opinion, be necessary for establishing the public credit." As a deficit of about \$825,000 still remained to be provided for, and as the act organizing the Treasury Department made it the duty of the Secretary of the Treasury to digest and submit, from time to time, plans for the public revenue and the management of the debt, the House had no choice save to trust the brilliant young finance minister a step further.

A bill to incorporate the subscribers to the Bank of the United States, framed in accordance with Hamilton's recommendation, passed the Senate on January 20, 1791, and the House on February 8. The debate was acrimonious, both the expediency and the constitutionality of the measure being attacked. Madison, who only three years before had collaborated with Hamilton in writing the papers of the *Federalist*, now urged that the Federal Convention of 1787 had rejected a proposal to give to Congress the power to charter corporations, and declared "that the power exercised by the bill was condemned by the silence of the Constitution; was condemned by the rule of interpretation arising out of the Constitution; was condemned by its tendency to destroy the main characteristics of the Constitution; was condemned by the expositions of the friends of the Constitution whilst depending before the people; was condemned by the apparent intentions of the parties

¹ Texts in the various editions of Hamilton's writings; abridged in my *Select Documents illustrative of the History of the United States*. Hamilton also submitted, in May, 1791, a report on coinage, and in December a report on manufactures.

which ratified the Constitution; was condemned by the explanatory amendments proposed by Congress themselves to the Constitution.”¹

So sweeping a criticism, joined to the known opposition of Jefferson and many of his followers to Hamilton, caused Washington to hesitate. The bank bill was not presented to the President until February 14, six days after it passed the House. Washington asked for the written opinions of the members of the Cabinet regarding the constitutionality of the measure. The opinion of Jefferson, submitted the next day, is the classical statement, in concise form, of the strict construction view of the Federal Constitution. “I consider the foundation of the Constitution,” he declares, “as laid on this ground: That ‘all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people’ [Xth Amendment]. To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.”

The power to incorporate a bank had not, in his opinion, been delegated to the United States by the Constitution. It is not among the powers, specially enumerated, to lay and collect taxes, &c., to borrow money, or to regulate commerce. Neither does it fall within the purview of the two general phrases which might be supposed to cover it. The first of those phrases is, again, the power “to lay taxes for *the purpose* of providing for the general welfare.”² For the laying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose.”

The second general phrase is, “to make all laws *necessary* and proper for carrying into execution the enumerated powers.” But they “can all,” declares Jefferson, “be carried into execu-

¹ *Annals of Congress*, 1789-1791, II. 1892-1960, *passim*.

² It will be noted that neither Jefferson nor Hamilton always quotes the Constitution exactly. “For the purpose of” is an interpolation expressive of Jefferson’s interpretation of the clause.

tion without a bank." The question of the possible convenience of such an institution has no bearing on the case; for the Constitution "allows only the means which are '*necessary*,' not those which are merely '*convenient*' for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to every one, for there is not one which ingenuity may not torture into a *convenience* in some instance *or other*, to *some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power."¹

Jefferson's opinion, with that of Randolph, the attorney-general, which took the same view,² were submitted by Washington to Hamilton,³ who on February 23 laid before the President his reply. The force and significance of its reasoning will be the better appreciated if we remember that the great structure of American constitutional law, so indispensable a reliance in the solution of later problems, had as yet no existence; that the Supreme Court of the United States had rendered no constitutional decision; and that the validity of any theory of the Union, federal or confederate, had not been put to the test. So far as constitutional theory was concerned, the United States in 1791 was an open forum wherein any one might propound any theory he chose, with no judicial authority to say him nay.

Hamilton addressed himself at once to the main objection urged by Jefferson and Randolph, that the Constitution gave to Congress no power to create a corporation. "Now it appears to the Secretary of the Treasury," he replied, "that this *general principle* is *inherent* in the very *definition* of government, and *essential* to every step of the progress to be made by that of the United States, namely: That every power vested in a government is in its nature *sovereign*, and includes, by

¹ Jefferson's *Works* (ed. 1854), vii. 555-561, *passim*. Most of the points in Jefferson's opinion had been brought out in the debate in the House.

² Randolph devoted his opinion mainly to a consideration of the bank as a corporation.

³ The letter is in Hamilton's *Works* (ed. 1851), iv. 103. In the preparation of his opinion Hamilton is said to have consulted William Lewis, an eminent lawyer of Philadelphia. See Rives's *Madison*, 168, note 1; J. C. Hamilton, *Republic of the United States*, iv. 247, 489, quoting Horace Binney's *Leaders of the Old Bar of Philadelphia*.

force of the *term*, a right to employ all the *means* requisite and fairly applicable to the attainment of the *ends* of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the *essential ends* of political society." It will be incumbent upon those who deny so axiomatic a statement "to prove a distinction, and to show that a rule which, in the general system of things, is essential to the preservation of the social order, is inapplicable to the United States."

The division of powers between the United States and the States does not afford the distinction required, since each is sovereign as to its proper objects. The abstract question of the right of the United States to create a corporation is, accordingly, not open to debate. "It is unquestionably incident to *sovereign power* to erect corporations, and consequently to *that* of the United States, in *relation* to the *objects* intrusted to the management of the government."

In the view of Jefferson, the Tenth Amendment — "The powers not delegated to the United States by this Constitution, nor prohibited by it to the States, are reserved to the States, or to the people" — excluded the right of creating a corporation, because such right was not among those enumerated. "The main proposition here laid down," replies Hamilton, "in its true signification is not to be questioned. . . . But how much is delegated in each case, is a question of fact, to be made out by fair reasoning and construction, upon the particular provisions of the Constitution, taking as guides the general principles and general ends of governments. It is not denied that there are *implied*, as well as *express powers*, and that the *former* are as effectually delegated as the *latter* Then it follows, that as a power of erecting a corporation may as well be *implied* as any other thing, it may as well be employed as an *instrument* or *mean* of carrying into execution any of the specified powers, as any other *instrument* or *mean* whatever. The only question must be, in this, as in every other case, whether the mean to be employed, or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government."

He then proceeds to examine Jefferson's interpretation of the word "necessary." "The Secretary of State maintains,

that no means are to be considered as *necessary* but those without which the grant of the power would be *nugatory*. Nay, so far does he go in his restrictive interpretation of the *word*, as even to make the case of *necessity* which shall warrant the constitutional exercise of the power to depend on *casual* and *temporary* circumstances; an idea which alone refutes the construction. The *expediency* of exercising a particular power, at a particular time, must, indeed, depend on circumstances; but the constitutional right of exercising it must be uniform and invariable, the same to-day as to-morrow. . . .

"It is essential to the being of the national government, that so erroneous a conception of the meaning of the word *necessary* should be exploded.

"It is certain, that neither the grammatical nor popular sense of the term requires that construction. According to both, *necessary* often means no more than *needful*, *requisite*, *incidental*, *useful*, or *conducive to*. It is a common mode of expression to say, that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers." To understand the word as Jefferson interprets it "would be to give it the same force as if the word *absolutely* or *indispensably* had been prefixed to it. Such a construction would beget endless uncertainty and embarrassment. . . . The *degree* in which a measure is necessary, can never be a *test* of the legal right to adopt it; that must be a matter of opinion, and can only be a *test* of expediency. The *relation* between the *measure* and the *end*; between the *nature* of the *mean* employed towards the execution of a power, and the object of that power, must be the criterion of constitutionality, not the more or less of *necessity* or *utility*."

Hamilton concludes this part of his argument — the only part with which I am now concerned — with the following

notable paragraph. The doctrine for which he contends, he declares, "leaves a criterion of what is constitutional, and of what is not so. This criterion is the *end*, to which the measure relates as a *mean*. If the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority. There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any State or of any individual? If it does not, there is a strong presumption in favor of its constitutionality, and slighter relations to any declared object of the Constitution may be permitted to turn the scale."¹

Only an elementary acquaintance with the sources of American constitutional law is needed to show the striking similarity between this statement of the familiar doctrine of implied powers, as found in Hamilton's masterly opinion on the constitutionality of a national bank, in 1791, and Marshall's much-lauded statement of the same doctrine in the leading case of *McCulloch v. Maryland*, in 1819. A few passages from Marshall's decision² will be sufficient to show that in thought and argument the two documents are essentially the same.

"It is not denied," says Marshall, "that the powers given to the government imply the ordinary means of execution. . . . But it is denied that the government has its choice of means, or that it may employ the most convenient means, if to employ them it be necessary to erect a corporation. On what foundation does this argument rest? On this alone: The power of creating a corporation is one appertaining to sovereignty, and is not expressly conferred on Congress. This is true. But all legislative powers appertain to sovereignty. . . . The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one

¹ Hamilton's *Works* (ed. 1851), IV. 104-138, *passim*. Washington is said to have hesitated still, and Madison, at his request, prepared a veto message for possible use (*Writings*, Hunt's ed., VI. 42, 43, note); but the bill was approved February 25, two days after the date of Hamilton's opinion.

² 4 *Wheaton*, 316-437.

particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception."

Citing the "necessary and proper" clause of the Constitution, and taking up the argument in favor of a restrictive interpretation of the words, urged by counsel for Maryland, Marshall continues: "Is it true that this is the sense in which the word 'necessary' is always used? Does it always import an absolute, physical necessity, so strong that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. . . . The baneful influence of this narrow construction on all the operations of the government, and the absolute impracticability of maintaining it without rendering the government incompetent to its great objects, might be illustrated by numerous examples drawn from the Constitution and from our laws. . . . We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

The foregoing citations from Hamilton and Marshall have been made as a necessary preliminary to the questions whose answer it is the main purpose of this paper to suggest. Those questions are, first, was Hamilton's opinion known to Marshall? and, second, did Marshall acknowledge any indebtedness to it for his arguments in *McCulloch v. Maryland* or elsewhere?

The earliest complete printed text of Hamilton's opinion that I have seen is that which is found in the first collected edition of Hamilton's writings, published at New York in 1810. Paul Leicester Ford, in his *Bibliotheca Hamiltoniana*, notes an

edition printed at Philadelphia sometime between 1800 and 1809 ("180-"). Ford's entry is not altogether enlightening. It reads: "The Argument / of the / Secretary of the Treasury / upon the / Constitutionality / of a / National Bank. / [Philadelphia 180-]." It is headed "1791. Feb. 23. Cabinet paper," and is described as "8vo, pp. 40." Judging from the headings prefixed to other entries in the same section of the *Bibliotheca Hamiltoniana*, the words "cabinet paper" are to be taken as descriptive of the contents or object of the document, and not of the collection or repository in which it is to be found. Further, no indication is given of the location of a copy, as is the case with most of the other entries; nor are the reasons given for assigning its publication to so extended a period as "180-." In comparison with so competent a bibliographer as Ford, I cannot venture to think that my own investigation has been exhaustive; but inquiry has thus far failed to locate a copy of any imprint of the opinion that can with confidence be said to have been printed at Philadelphia between 1800 and 1809.

The opinion is not noted in General Greely's definitive list of the "Public Documents of the First Fourteen Congresses." Indeed, as a cabinet paper, primarily intended only for the guidance of Washington, it would not regularly be printed as a document, but if published at all would almost certainly have been issued privately. The fact that Washington, in transmitting to Hamilton the opinions of Jefferson and Randolph, directed "that no copies of them be taken, as it is for my own satisfaction they have been called for," certainly suggests an intention to treat Hamilton's opinion as equally private. There seems to be no reason to believe that Congress ever saw it; there is an almost total lack of allusion to it among Hamilton's contemporaries; and had it found its way into the newspapers, or even been seen in manuscript by many persons, Hamilton's enemies, and particularly Jefferson, would almost certainly have made use of it. My only explanation of Ford's entry is, that he had seen a rare imprint which I have thus far been unable to locate. With this possible exception, there is no printed copy of the full text of the opinion of earlier date than 1810. (See note p. 426, *infra*.)

A portion of the opinion had, however, been printed before

that date, and in no less significant a place than one of the appendices to Volume V of Marshall's *Life of Washington*. The first three volumes of this work bear date of 1804, the fourth volume that of 1805, and the fifth that of 1807. Professor McMaster has told us, in his *History of the People of the United States*, of the interest which the announcement of the preparation of this elaborate work aroused, of the large sales that were anticipated, and of how the dry and formal character of the book, its pronounced Federalist bias, and the charge that it was intended to influence the election of 1804 against Jefferson, made it a failure. The title-page sets forth that the work was "compiled under the inspection of the Honourable Bushrod Washington [associate-justice of the Supreme Court from 1798 to 1829] from original papers bequeathed to him by his deceased relative, and now in possession of the author."

After briefly summarizing the debate in the House on the constitutionality and expediency of the bank bill, Marshall disposes as follows of the cabinet discussion:

"The point which had been agitated with so much zeal in the house of representatives, was examined not less deliberately by the executive. The cabinet was divided upon it. The secretary of state and the attorney general conceived that congress had clearly transcended their constitutional powers; while the secretary of the treasury, with equal clearness, maintained the opposite opinion. The advice of each minister, with his reasoning in support of it, was required in writing, and their arguments were considered by the president with all that attention which the magnitude of the question, and the interest taken in it by the opposing parties, so eminently required. This deliberate investigation of the subject terminated in a conviction, that the constitution of the United States authorized the measure, and the sanction of the executive was given to the act."¹

A footnote to this paragraph refers to the appendix, Note III, where nearly eight pages of smaller type are given to a summary of and quotations from the opinions of Jefferson and Hamilton. The extracts are introduced by the following paragraph:

"This question was investigated with great labour, and be-

¹ *Life of Washington*, v. 297.

ing one involving principles of the utmost importance to the United States, on which the parties were divided, the subject was presented in all the views of which it was susceptible. A perusal of the arguments used on the occasion would certainly afford much gratification to the curious, and their insertion at full length would perhaps be excused by those who recollect the interest which at the time was taken in the measure to which they related, and the use which was made of it by the opponents of the then administration; but the limits prescribed for this work will not permit the introduction of such voluminous papers.¹ It may however be expected that the outline of that train of reasoning with which each opinion was supported, and on which the judgment of the executive was most probably formed, should be briefly stated."

Marshall was of course familiar with the *Federalist*. The original edition of that work, published in 1788, was reprinted in 1799, and other editions followed in 1802, 1810 and 1817. In No. 31 of the *Federalist*, Hamilton comments on the "necessary and proper" clause with special reference to its bearing on the power of taxation, but points out that it will doubtless have equally wide application in other fields also.² His brief discussion of implied powers in the *Federalist* is, however, in comparison with the elaborate exposition in his opinion of 1791, hardly more than a bare suggestion, a text for a discourse. The verbal similarities in Marshall's judicial decision are to the language of the opinion, not to that of the *Federalist*. Marshall made brief use of the doctrine of implied powers as early as the February term, 1805, in the case of *United States v. Fisher et al.*,³ where the words and phrases are peculiarly suggestive of their origin.

¹ This may perhaps be taken as a confirmation of the view, already expressed, that the paper had not hitherto been printed.

² "I have applied these observations thus particularly to the power of taxation, because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the Union. But the same process will lead to the same result in relation to all other powers declared in the Constitution. And it is *expressly* to execute these powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all *necessary* and *proper* laws." *The Federalist* (Ford's ed.), 202, 203.

³ 2 Cranch, 358-405. "In construing [the 'necessary and proper'] clause it would be incorrect, and would produce endless difficulties, if the opinion should

That Marshall knew the Hamilton opinion of 1791 is, of course, a simple matter of fact, as shown by the extracts from it in his *Life of Washington*. Curiously, he seems to have been about the only person who, prior to at least 1807, did know it. An extended search of the published writings of contemporary statesmen discloses no references to it during Hamilton's lifetime; and Hamilton was killed in the summer of the year that saw the publication of the first three volumes of the *Life of Washington*. If Jefferson, who called the *Federalist* "the best commentary on the principles of government which has ever been written,"¹ appreciated the significance of the far more masterly opinion on the constitutionality of a national bank, he does not appear to have reduced his views to writing; and Madison, whose constitutional objections to the bank were as effectually demolished as were those of Jefferson, seems to have been equally silent. The paper was certainly not in print before 1800; and even if Paul Leicester Ford's entry of a print in "180—" is correct, there is no evidence, so far as I have discovered, that it attracted any attention. It was a cabinet memorandum, not intended for publication, written in the interval between the passage of the bank bill by Congress and its approval by the President. As such, it seems a reasonable conjecture that the opinion remained in manuscript among Washington's papers, passing upon Washington's death into the possession of Bushrod Washington, who turned it over, with others, to Marshall for use in preparing the latter's *Life of Washington*. That Marshall should have drawn upon it as heavily as he did in preparing one of his greatest opinions suggests either that Bushrod Washington himself had never read it, or, if he had, that he had forgotten it, or else that he was willing to have anything accounted grist that came to the chief-justice's mill.

he maintained that no law was authorized which was not indispensably necessary to give effect to a specified power.

"Where various systems might be adopted for that purpose, it might be said with respect to each that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution."

¹ Letter to Madison, November 18, 1788, quoted in P. L. Ford's ed. of the *Federalist* (1898), XXIX. note 1.

In regard to the second question, it does not appear that Marshall ever acknowledged his debt to Hamilton. Biographers tell us that the two men were firm friends, though I am not able to make out that they ever saw much of one another. The statements of the *Federalist* on various points are from time to time cited, and always spoken of with respect. The only statement, however, that may be regarded as including in its reference the opinion which I have been discussing, is found in *McCulloch v. Maryland*. The passage occurs near the opening of the decision, and reads as follows:

“The power now contested was exercised by the first Congress elected under the present Constitution. The bill for incorporating the Bank of the United States did not steal upon an unsuspecting Legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted, first in the fair and open field of debate, and afterwards in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law.”

There remains only to point out that, of the many writers who have dealt with the constitutional period or sketched the lives of Hamilton and Marshall, apparently the only one who has clearly perceived the significance of Hamilton's opinion, and Marshall's indebtedness to it, is Mr. Henry Cabot Lodge. In his life of Hamilton, in the *American Statesmen* series, Mr. Lodge says: ¹

“This argument on the constitutionality of the national bank, as a piece of legal reasoning, is the most important which Hamilton ever produced, not only in itself but because it can be tried by the highest possible standard. In *McCulloch v. Maryland*, Chief Justice Marshall went over precisely the same ground on the same question, deciding the point, as is well known, in Hamilton's favor. There are few arguments which will bear to be placed side by side with those of Marshall, but Hamilton's stands the comparison without suffering in the trial. The able and luminous decision of the chief justice adds nothing to the argument of the secretary and takes nothing from it, nor is the work of the latter inferior to the opinion of

¹ Revised ed., 1898, 103, 104.

the judge in clearness and force of expression. I am far from meaning to imply by this that Hamilton was as a lawyer the equal of Marshall, who stands at the head of all lawyers, especially on constitutional questions. But it may be truly said that a man who could in much haste produce an argument which can be placed beside an opinion of the great chief justice, involving the very same question, is fairly entitled to stand in the front rank of lawyers, and can be credited with the possession of legal talents of the highest order."

The conclusions to which this inquiry leads may be summarized as follows:

1. Hamilton, in his opinion on the constitutionality of a national bank, in 1791, expounded at length the constitutional doctrine of implied powers, the nature and scope of which he had briefly intimated in the *Federalist*, less than three years before. The exposition is definitive and complete, and no restatement of the doctrine is possible save in substantially identical terms.

2. Hamilton's opinion, being a cabinet paper intended for the guidance of Washington alone, was not made public at the time; was not printed in full until 1800 or later, and not in a form to be generally accessible until 1810; and remained either unknown to, or unnoticed by, the statesmen and jurists of the period with the single exception of Marshall.

3. Marshall found the opinion among the Washington manuscripts which he used in preparing his *Life of Washington*, and printed extracts from it in the appendix to the fifth volume of that work.

4. Marshall's statement of the doctrine of implied powers, in the case of *McCulloch v. Maryland*, is substantially identical, so far as it goes, with the statement in Hamilton's opinion. The statement in the decision of the court is, however, inferior in logical elaboration and literary distinction to the statement in the opinion.

5. The great doctrine of implied powers, judicially formulated and given legal force by Marshall, originated with Hamilton, and was completely expounded by him twenty-eight years before it was embodied by Marshall in a leading case.

6. Whether the ethical principle that one writer should not copy from another without giving credit for what he has taken,

applies to a jurist as well as to an historian, depends, perhaps, somewhat upon the point of view. The opinion of a cabinet officer, however original or convincing, is only the unauthoritative expression of an administrative official. The opinion of the Supreme Court, on the other hand, has the force of law. In enunciating, as the opinion of the court, Hamilton's doctrine of implied powers, Marshall afforded an interesting example of the way in which the accident of official position may enable a man to appropriate, consciously or unconsciously, the credit for ideas which in fact originate with another.¹

Remarks were made during the meeting by Messrs. SANBORN, THAYER, and WINSHIP.

¹ Hamilton's opinion is printed in the various editions of his writings, in P. L. Ford's edition of the *Federalist*, and elsewhere. The main portions of it are also in Story's *Commentaries* (ed. 1833), and in my *Select Documents illustrative of the History of the United States*.

[Two copies of issue noted by Ford (p. 420, *supra*), without year or place of issue, are in the Boston Athenæum. They are bound with other pamphlets issued in 1810. At first I thought it might be a "separate" printed from the type of the first volume of Hamilton's *Writings*, published in New York in that year; but a comparison showed it to be a distinct issue, and in all probability reset from the text in the *Writings*. The catalogue of the Athenæum states 1791 as the year of issue, — clearly an error. I have little hesitation, however, in assigning 1810 as the correct date. — W. C. F.]